

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LARRY D. CATHCART, JR.,

Plaintiff,

v.

SHERIFF ZACK SCOTT, et al.,

Defendants.

Case No. 2:13-cv-502

JUDGE GREGORY L. FROST

Magistrate Judge Norah McCann King

OPINION AND ORDER

This matter is before the Court for consideration of Plaintiff's Motion to Stay Proceedings and for Leave to File Amended Complaint or, in the Alternative, for Voluntary Dismissal Without Prejudice. (ECF No. 27.) As the title of the motion indicates, Plaintiff asks the Court to permit him to file an amended complaint or to permit him to voluntarily dismiss this action without prejudice.

Plaintiff purports to seek the dismissal of his case under Federal Rule of Civil Procedure 41(B)(2), but there is no such provision. Rule 41(a)(1)(A)(i) provides that "the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Rule 41(a)(2) in turn states that "[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." A dismissal under either part of the rule is generally without prejudice, subject to some exceptions. *See* Fed. R. Civ. P. 41(a)(1)(B) and (2). Because Plaintiff states that he "seeks leave to voluntarily dismiss without prejudice," the Court understands that he is proceeding by motion under Rule 41(a)(2) as

opposed to effectuating an automatic dismissal by notice under Rule 41(a)(1)(A)(i).

Because Plaintiff has neither proffered an amended complaint nor indicated what facts he would plead in an amended complaint, the Court cannot say that Plaintiff has provided justification for obtaining leave to amend. But, despite the pending motion to dismiss (ECF No. 13) and the Report and Recommendation (ECF No. 20), the Court concludes that Plaintiff has provided sufficient cause warranting the requested dismissal. Informing this conclusion to a limited degree is the fact that if Plaintiff had a better understanding of Rule 41 and had filed a notice as opposed to a motion, this Court would have no role in the dismissal without prejudice of this action. *See Aamot v. Kassel*, 1 F.3d 441, 444 (6th Cir. 1993).

The Court therefore **GRANTS IN PART** Plaintiff's Motion to Stay Proceedings and for Leave to File Amended Complaint or, in the Alternative, for Voluntary Dismissal Without Prejudice. (ECF No. 27.) The case is dismissed without prejudice, and the pending motions and Report and Recommendation are moot. (ECF Nos. 13, 20, 24, 25.) The Clerk shall enter judgment accordingly and terminate this case on the docket records of the United States District Court for the Southern District of Ohio, Eastern Division.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE